

MINUTES OF THE BOARD MEETING FOR THE DEPARTMENT OF LIVESTOCK

DEPARTMENT OF LIVESTOCK ROOM 308
TELEPHONE CONFERENCE CALL
HELENA, MONTANA

February 20, 2007

Department of Livestock Room 308
Conference Call

Call To Order

Chairman Bill Hedstrom called the meeting to order at 12:30 p.m.

Attendance:

Board of Livestock members on line: Bill Hedstrom, Chairman, Meg Smith, Linda Nielsen, John Paugh, Janice French (joined the meeting at 12:45 p.m.), George Hammond and Lee Cornwell.

Department personnel present: George Harris, Acting Executive Officer/Central Services Division Administrator; Sheila Martin, Personnel Officer, and Sherry Rust, Executive Secretary.

Public present: Clyde Peterson, Attorney Justice; Jim Kerins, HR Consultant; Mrs. Bill Hedstrom; Errol Rice, MSGA

Executive Officer Recruitment

George Harris reviewed for the Board the response from Viv Hammill regarding recruitment of an executive officer. The position should be announced as an exempt position, not a permanent position. The difference being is that a classified position is a permanent position and can only be removed for cause, whereas an exempt position serves at the pleasure of the Board and ultimately the Governor who appoints the Board.

The issues as laid out in the response are as follows:

- The Department of Livestock is in the Executive Branch and subject to the authority of the Governor.
- The original creation of the executive officer position was not properly done, is not proper on the organizational chart, and needs to be addressed by the Governor.
- The bylaws used by the Board are not legal and are meaningless. The attorney who wrote them in the 60's told the Board they were not legally binding. Former E.O., Les Graham, told Viv that he knew he served at the pleasure of the Board.
- The Governor by his authority in 2-15-103 has the express authority to resolve conflicts in any executive branch agency. He can do this by Executive Order and the decision of the Governor is final. Viv indicated that Governor is well within his authority to remedy this problem.

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- The Executive Officer position is to serve at the pleasure of the Board and ultimately the Governor and should be an exempt and not have permanent employee status. The job should be announced this way.
- The Board or a subcommittee of the Board should screen the applications and interview and hire .
- Jim Kerins can handle the recruitment as long as he stays out of legal issues. The Department's personnel officer can assist.
- If the job is advertised to industry organizations it must be advertised to all organizations, just advertising in newspapers seems sufficient to Viv.
- Viv will visit with the Governor and see if it is his wish to have exempt or permanent status on the position. The email received from Viv with the updated job announcement and updated pd appears that the position is to be exempt.

George interpreted the reply as a statement from the boss and asked Clyde Peterson his take on it. Clyde said that is it, one serves at the pleasure of the boss.

Lee Cornwell commented that right or wrong in the past the executive officer was recruited and hired by the Board of Livestock and questioned Clyde on how the new process will work.

Clyde replied it will work however it is defined. The executive officer position was created by the Board. He reviewed the problems with chain of command and conflicts between divisions within the agency which caused the Board to create that position. Divisions then reported to the Ex. O. who reported to the Board. Anything so created is subject to the Governor. So if the Governor's office wish to redefine it he can do so.

Lee said the way it has been done in the past, with the Board hiring an executive officer, four or five since the position was created. He asked if the Board needed direction from the Governor before hiring.

George Hammond gave his position that the Board has historically been there to serve the industry and the Board is appointed by the Governor. The executive officer is a state employee, employed by the Board, the same as any other personnel. One of the things the Board has prided themselves on is the longevity or the continuity created by the means of operation. Now this is going to become an exempt position and puts it at the whim of politics. The Department needs continuity, not politics, because it is here to serve the industry, not a political office regardless of whichever one.

Jan French questioned if the position is permanent and if the Board is unhappy with that exec. the Board cannot get rid of him? George Harris replied the Board

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can, it might be more difficult and due process must be met. The position can be removed for two reasons, one is failure to perform assigned duties and the other is misconduct. They have been removed in the past. She then questioned what does the Board have to do to change something like that. George Hammond replied it was done that way in the past, it was considered a permanent position. George Harris continued, the position is a classified state employee and all classified employees can be removed. They can be terminated after going through due process. We can and have removed classified permanent employees in the past involving the executive officer.

Jan asked if the Board doesn't like the way it is now, what can be done to change it. George stated it is a classified permanent position, budgeted, classified in the state classification system. What would happen is through an Executive Order it would no longer be a classified position and would become an exempt position with no protection in terms of tenure of the position. If for any reason if the Board or the Governor were not happy the position could be removed.

Jan then asked if the Governor changed this. George replied that his attorney sent revised job announcement indicating the job status as exempt, not entitled to permanent status. and the position reports to the appointed Board of Livestock and all policy conflicts are resolved by the Governor who's decision is final in 2-15-103, MCA.

Jan French asked how did it change from being what it was to being exempt? The reply was Viv Hammill indicated with her revisions that it must be changed.

John Paugh interjected that nothing has been changed yet, the proposals from Viv are just that - proposals.

Jim Kerins reviewed a previous incident with an executive officer that the Board had performance problems with. The Board was advised at that time by Viv Hammill that this was a classified permanent position and the Board would need to go through due process if they wanted to terminate that executive officer. Since that instance happened and what the Board is being told now, something has changed. The previous executive officers were hired as classified based on the experience the Board had with that one executive officer. The change appears to have come from a legal interpretation from an attorney sometime between Marc Bridges predecessor and this current recruitment the legal opinion has changed based perhaps on a more thorough review. This is the history, not a legal interpretation.

Meg Smith commented that the executive officer position is on the organizational chart which is a product of statute, even though the bylaws are deemed meaningless by the attorney. She questioned Clyde whether that is in statute.

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Clyde replied that he does not think the executive officer position is in statute. As he recalled it was a created position by the Board of Livestock back then.

George Harris noted that the position is on the organizational chart which is on file with the Governor's office as per statute. Viv indicated that needs to be corrected also.

Lee Cornwell questioned how the organizational chart would appear then if the Board made the changes as per Viv Hammill. George Harris said the organizational chart must be filed through rule making and the rule making process must be adhered to per John Bloomquist, attorney.

John Paugh moved to open advertisement and start the hiring process for the Executive Office using the advertisement that was approved by the Board in the December 2006 meeting with the Acting Executive Officer and Mr. Kerins to proceed as quickly as possible. To be advertised within a few days at a grade 22, as a classified permanent position, and allowing 30 days to advertise. George Hammond seconded.

Linda Nielsen questioned why make a motion to do something that has been brought in question. Clyde Peterson said it is not a bylaws questions. The proposed motion is something the Governor has indicated he prefers the Board not do. He advised the Board to know what they are doing and be aware the Governor has indicated he would prefer the issue be handled differently than in the proposed motion.

Lee Cornwell questioned if it would change the structure or the way the Department operates if the Board was to go with an exempt position rather than a classified one like the Department of Transportation, or the Department of Fish & Game. Clyde's reply was no, this is just changing the way this person serves, similar to Attorney General Mike McGrath, many of his attorneys are classified positions, as he is, and there are a few personal staff positions which are exempt. He gets to appoint them and can un-appoint them. In this case by Executive Order an executive officer that serves at the pleasure of the Board, clarifys a position that many thought was already that way.

John Paugh commented that none of the Board members thought that. They had been told that that position was permanent and the Supreme Court's decision a few years back verified that.

Chairman Hedstrom felt the Board was led by the fact that the bylaws provided in the 60's classified that as an exempt position and the Board just changed it in December. Up until last month the Board thought the bylaws had some authority and now that they don't have authority they are out the window. The Board had

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been following the assumption that the position was exempt and so all the hiring with the bylaws in mind was hired with an exempt in there. Right or wrong the Board was following the bylaws and that is not the wishes of the Board. Now the bylaws do not have any authority.

John Paugh commented that the bylaws have all the authority they ever had. It is an organizational rule that the Board operates under and that is all it ever was.

George Harris reviewed the history and summarized the position as serving at the pleasure of the Board but the bylaws did not say it was exempt, even though it was a classified position, it served at the pleasure of the Board. In the analysis of the conflict with a prior executive officer's discipline proceeding it was determined that it was a classified, permanent employee, but the bylaws conflicted with the permanency.

George Hammond replied the bottom line is the fact of the change made a meeting or two back. as recommended by Viv. In effect the Board change backed up the fact that it was a classified position.

George Harris agreed but said Viv then stated the bylaws have no effect.

Meg Smith interjected the Board has served the livestock industry for 123 year and they must decide what best serves the livestock industry. Not argue about bylaws or whatever.

Lee Cornwell then questioned Clyde on the reference by Viv to 2-15-103 if the Board takes permanent, classified position off the position does that mean according that statute that the Executive Officer serves at the pleasure of the Governor. Clyde replied that statute is the "boss" section of state law and says the Governor gets to resolve any conflict and his word is final. Lee then asked how one determines when there is a conflict allowing the Governor to exercise 2-15-103. Clyde replied that if the rule or policy or Executive Order was signed by the Governor saying that the person serves at the pleasure of the Board there is no room for interpretation. The reply from Viv appears to leave the question up to the Board, that needs clarification however.

John Paugh commented that when Vivian came to the September meeting she said it cannot be both ways so the Board made the position permanent. Nothing has happened to change anything to this point.

Chairman Hedstrom summarized the issue as if the Board passes this motion classifying it as a permanent positioned the Governor agrees the Board can proceed as usual. If the Governor does not agree with this he can make an Executive Action to change it. He than asked if it was the willingness of the Board

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to go ahead with the motion as presented by John, is the Board going to take a chance on establishing their authority and have the Governor override it. He may or may not.

George Hammond called for the question.

Jan French asked for Clyde Peterson's take on the situation, does it really matter which way the Board goes. Clyde suggest consideration of the Governor's wishes and decide if the conflict has any meaning or not. If made an exempt position that serves at the pleasure of the Board, not the pleasure of the Governor what is the difference in making this exempt or permanent under this situation.

Lee Cornwell asked how other divisions are set up. Clyde replied with an explanation of the uniqueness of this agency, it is only agency in which the director is a board. Other agencies have an appointed director with advisory boards or commissions, like Fish, Wildlife & Parks or the Department of Transportation. He suggested that the bylaws were meant to be a how to manual for new Board members, to give them based on statute and rules to give them an idea of how things run and their powers, and an indication of how the day to day functions of the agency were accomplished. George Harris quoted 2-15-3101, MCA that statutorily the Board is the director of the Department.

John Paugh agreed that the bylaws are merely a tool to guide the Board in managing the agency. He then asked to proceed with the motion. The motion was then read back for clarification. Questions were asked regarding Board authority to screen, interview and hire and possible impact on applicants should the position become exempt or non-permanent. Regarding Board authority, nothing has changed the Board is still the director who screens, interviews, and hires. Regarding prospective applicants, qualified persons already in state government would likely not apply for a exempt or non classified position; in the need for a candidate well versed in the needs of the industry and agency as apposed to an administrative administrator it might attract less qualified applicants and the salary range is lower than the average salary range for at the will appointees so the Board might need to look as additional monetary incentives, also the incentive is lost for employees coming up through the ranks of the department in pursuing the executive officer position.

A roll call vote was taken on John Paugh's motion, seconded by George Hammond regarding advertising the Executive Officer position. George Hammond – yes; Meg Smith – yes; Linda Nielsen – no; Lee Cornwell – yes; Jan French – yes; John Paugh – yes. The motion carried five to one.

Classification Findings

George Harris indicated to the Board the need for a classification review for the

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accounting supervisor due to permanent changes in duties. He proposed an upgrade for that position as well as for the accounting technician. Updates for both position descriptions are being updated by Sheila Martin at this time. Jim Kerins stated the need for these upgrades is appropriate in response to the Department's ongoing needs, regardless of whether George is the acting E.O. or returns to his regular position. Reclassification from 15 to 16 for the accounting supervisor and from 10 to 11 or 12 for the accounting tech may be justified based on their additional duties.

Jan French moved to continue with the reclassification of the positions of accounting supervisor and accounting tech. Lee Cornwell seconded.

John Paugh responded that while this may be a worthy cause, there are other departmental employees that are in similar positions. The study or process needs to continue. He cautioned it might not be best to raise one out of 136. The Board should be concerned about everybody. He suggested it could be better discussed at the regular Board meeting.

George Harris agreed there must be full consideration of all divisions. That effort was made last year and will continue to be made this year.

The Board voted unanimously to table the motion until the next regular Board meeting.

Acting Executive Officer Serving In Dual Capacity as CSD Administrator

George Harris reviewed concerns regarding potential problems or potential conflicts with his serving in the dual capacity of Acting Executive Officer and CSD Administrator from a fiduciary or financial standpoint. Written opinions from the head CPA for the state, Paul Christopherson, and the State Personnel Division indicated there is not a conflict. Essentially the accounting is entered at a lower level with the Accounting Supervisor Janet Nick approving all transactions. There is no conflict in signing of contracts in the dual role either.

Adjournment Chairman Bill Hedstrom adjourned the meeting at. 1:30 p.m.

/s/ Bill Hedstrom
BILL HEDSTROM, CHAIRMAN
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***Chairman Hedstrom voted to approved and sign the minutes noting that while the minutes have been approved, the meeting may have been improperly noticed. Any action items where the Board voted can be legally challenged.*